

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF REMEDIATION
BROWNFIELD VOLUNTARY AGREEMENT

This Brownfield Voluntary Agreement addresses the Site located at 1593 Union Avenue, Memphis TN 38104. The Site has been assigned site number 79-943 and is known as the Wendy's #246 Site.

I. INTRODUCTION

This Brownfield Voluntary Agreement (hereinafter referred to as the "Agreement") is made and entered into as of the last date of execution shown herein below by and between the Tennessee Department of Environment and Conservation (hereinafter referred to as "TDEC" or the "Department") and Montgomery Partnership, a Tennessee general partnership (hereinafter "Voluntary Party") for the purpose of addressing the above-referenced site (hereinafter "Site"), which has the real or perceived threat of the presence on the Site of hazardous substances, solid waste, or any other pollutant. The administrative record for the Site addressed in this Agreement is maintained by the Department's Division of Remediation. The Site has been assigned site number 79-943 and is known as the Wendy's #246 Site.

David W. Salyers, P.E., is the duly appointed Commissioner of the Department. James S. Sanders, Director of the Department's Division of Remediation, has been delegated the authority to enter into this Agreement.

Pursuant to Tennessee Code Annotated section 68-212-224, the Commissioner is authorized to enter into an Agreement with a party who is willing and able to conduct an investigation and/or remediation of a hazardous substance site or Brownfield Project and who did not generate, transport, or release the contamination that is to be addressed at the Site.

The Department and the Voluntary Party agree to undertake all actions required by this Agreement. The purpose of this Agreement is to set forth a scope and schedule of activities at the above-referenced Site and respond to the actual, threatened, or perceived release of hazardous substances at the Site. In addition, this Agreement is intended to settle and resolve the potential liability of the Voluntary Party for the real or perceived threat of the presence of hazardous substances, solid waste, or any other pollutant at the Site which might otherwise result by the Voluntary Party's current ownership or operation of the Site.

II. REQUIREMENTS

A. **SITE LOCATION**

The Site is located at 1593 Union Avenue, Memphis TN 38104. A legal description of the Site and a survey map showing the Site is attached as Exhibit A, which is incorporated herein by reference.

B. **ELIGIBILITY**

As required by Tennessee Code Annotated section 68-212-224(a)(4), as of the effective date of this Agreement, the Department has determined that the Site is not listed or been proposed for listing on the federal National Priorities List by the United States Environmental Protection Agency ("EPA").

The Site was accepted into the Brownfield Projects Voluntary Cleanup Oversight and Assistance Program on January 23, 2019. By entering into this Agreement, the Voluntary Party certifies to the best of the Voluntary Party's knowledge that pursuant to Tennessee Code Annotated section 68-212-224(a)(1) the Voluntary Party did not generate, transport, or release the contamination that is to be addressed at the Site. As required by Tennessee Code Annotated section 68-212-224(a)(2), a summary description of all known existing environmental investigations, studies, reports, or documents concerning the Site's environmental condition has been submitted to the Department by the Voluntary Party (a copy of the Summary is attached hereto as Exhibit B).

C. FINANCIAL REQUIREMENTS

Tennessee Code Annotated section 68-212-224 requires consideration of a fee to enroll in the Voluntary Cleanup Oversight and Assistance Program. The Commissioner has set the following schedule of fees that may apply to all sites working in cooperation with the Department to recover the expense of oversight. These fees are in place of hourly time charges and normal travel costs during the first 150 hours of oversight for the project.

Program Entry	\$ 750
Site Characterization	\$ 2,000
Remediation	\$ 2,500
Risk Assessment	\$ 2,000
Vapor Intrusion Evaluation	\$ 2,000
Voluntary Agreement/Consent Order	\$ 3,000
Land Use Restrictions	\$ 500
Annual O&M Review	\$ 500

In addition to the fees identified previously, an annual longevity fee of \$3,000 will be charged to the Voluntary Party on the anniversary of the date the site was accepted into the Voluntary Program until a letter requiring no further action has been issued or this Agreement has been terminated.

Upon reaching 150 hours of oversight, the Site will be charged the current hourly rate (e.g. seventy-five dollars (\$75.00) per hour for FY 2017-2018) per hour of oversight in addition to the fee schedule listed above. This amount includes the current hourly rate and pro rata portion benefits for the Department's employees actively employed in oversight of work under this Agreement, including preparation for and attendance at meetings, mileage, any costs billed by State contractor(s) who are actively performing oversight, and the current State overhead rate. Additionally, any out-of-pocket expense, mileage, lab expense or other unusual costs to the Department shall be billed to and paid by the Voluntary Party. The applicable Voluntary Party shall pay each bill referenced in this Section C within sixty (60) days of receipt by such Voluntary Party.

Applicable fees and financial requirements must be timely paid by the applicable Voluntary Party to remain in the Voluntary Cleanup Oversight and Assistance Program and to receive a letter of no further action under Section G of this Agreement. For the purpose of this Agreement, timely payment means the Department receiving payment from the Voluntary Party within 60 days of the first billing of a financial requirement or according to a payment plan agreed in writing between Voluntary Party and the Department.

Notwithstanding the foregoing, any and all cost recovery assessments arising from actions to comply with or modify a recorded Notice of Land Use Restrictions imposed pursuant to and recorded on the Site under the terms of this Agreement, shall be due from and payable only from the particular Voluntary Party or Successor Party submitting the report to be reviewed or requesting or necessitating the related oversight action by TDEC that gives rise to the associated fees.

D. IDENTIFICATION AND DOCUMENTATION OF MATTERS ADDRESSED

Real or perceived hazardous substances, solid wastes, or other pollutants are determined to be present on this Site to an extent that may or may not have yet been fully characterized. Pursuant to Tennessee Code Annotated section 68-212-224(a)(2), the Voluntary Party has submitted to the Commissioner a summary description of all known existing environmental investigations, studies, reports, or documents concerning the site's environmental condition. Based on the information submitted to the Department by or on behalf of the Voluntary Party, and the Department's own review of this information, the Parties hereto agree that the environmental conditions identified in the reports referred to in Exhibit B and any reports generated pursuant to this Agreement, or in the Summary, including the environmental conditions described below are to be addressed under this Agreement (collectively referred to as the "*Matters Addressed in this Agreement*"):

The site appears to have been utilized as a filling/service station (from at least 1932 through at least 1952), an automotive repair facility, a potential dry-cleaning facility in the late 1950s/early 1960s, and an automotive dealership prior to being redeveloped as a Wendy's restaurant in the mid-1970s. Sanborn Fire Insurance maps from the early 1950s depicted four gasoline underground storage tanks (USTs) on the northeast corner of the property; however, no documentation of

installation or removal of the USTs was found. The potential for subsurface impacts and vapor intrusion from past activities led to a geophysical survey and collection of subsurface samples in 2018.

Through the use of ground penetrating radar (GPR), it was determined that the petroleum USTs formerly located on the northeast portion of the property had been removed at some time in the past.

A total of 12 soil borings were completed during the 2018 Phase II investigation, with subsurface soil and groundwater samples (when encountered) collected from each boring.

Sample results show several petroleum related compounds present in subsurface soil and groundwater beneath the site. The concentration of total xylenes in subsurface soil sample SB02 (89.2 mg/kg), collected at a depth of 8 to 9 feet below ground surface, exceeded the Tennessee Division of Underground Storage Tanks (TDUST) Inhalation Based Risk Based Cleanup Levels (RBCLs) for a commercial worker (88.0 mg/kg) and a resident child (9.6 mg/kg). The total xylenes concentration in subsurface soil sample SB07 (18.2 mg/kg), collected at a depth of 24 to 25 feet BGS, exceeded the TDUST inhalation based RBCL for a resident child (9.6 mg/kg). Additionally, naphthalene (32.2 ug/L in sample GW-1, 113 ug/L in sample GW-2, and 96.5 ug/L in sample GW-4) exceeded the TDUST RBCL for groundwater ingestion for both a resident child and industrial/commercial worker (20 ug/L). Benzene (51.5 ug/L in sample GW-1) exceeded the TDUST RBCL for groundwater ingestion for both a resident child and industrial/commercial worker (5 ug/L). Additionally, the detection limit for sample GW-2 (<33.1 ug/L) exceeded the TDUST RBCL for groundwater ingestion of both a resident child and industrial/commercial worker.

Sub-slab and exterior soil gas sampling in February 2020 revealed the presence of several VOCs and petroleum related compounds, with two constituents (benzene and dichlorodifluoromethane) exceeding their respective commercial/industrial vapor intrusion screening levels (VISLs). Benzene was detected at a concentration of 130 ug/m³ in the sub-slab soil gas sample Dining Room 2 which exceeds the applicable VISL of 52.4 ug/m³. However, this result was less than a carcinogenic risk of 1 x 10⁻⁵. Dichlorodifluoromethane was detected in the sub-slab soil gas

Kitchen sample at 8,000 ug/m³, which exceeds the applicable VISL of 2,920 ug/m³. However, this result was less than a target hazard quotient of 1. Several VOCs were also detected in an exterior soil gas sample collected in the parking lot east of the building, but none of these detections exceeded TDUST Exterior Soil Gas Lookup Values. The results for the parking lot sample, which is close to the former service station and drycleaner location indicated a target carcinogenic risk of less than 1×10^{-5} and a target hazard quotient of less than 0.2 in comparison to commercial/industrial VISLs for detected constituents. However, the detection limits for 1,2-dibromoethane for the parking lot sample, as well as the sub-slab soil gas samples, exceeded applicable industrial/commercial VISLs. Based upon a review of the soil and groundwater results, 1,2-dibromoethane was not detected. The detection limits for groundwater exceeded the applicable TDUST RBCL for ingestion of water for a commercial/industrial worker and resident child (0.05 ug/L). However, the detection limits for groundwater were less than the applicable TDUST inhalation based RBCLs for a commercial/industrial worker (499 ug/L) and a resident child (85.5 ug/L). Xylenes were included on the analyte list for the sub-slab and exterior soil gas samples. The xylene results did not exceed applicable commercial/industrial VISLs or TDUST Exterior Soil Gas Lookup Values.

No surface soil samples were collected during the 2018 Phase II investigations. Site soil is currently covered by asphalt and/or the building slab, thereby preventing exposure to surface soil. The asphalt and building slab will remain in place, per the Notice of Land Use Restrictions. Therefore, further investigation or remediation of Site soil to address surface soil is not required under this Agreement.

The Voluntary Party is not proposing to redevelop this Site and intends that it will remain an operating restaurant. Pursuant to this Agreement, Voluntary Party is not being required to fully remediate the pre-existing environmental conditions noted above but is required to take certain actions specified in this Agreement to ensure that the identified environmental impacts and conditions do not pose a threat to human health or the environment.

The Voluntary Party agrees that criteria required in Tennessee Code Annotated section 68-212-206(d) shall be used in determining containment and cleanup actions, including monitoring and maintenance options to be followed under this Agreement.

E. AGREED LIABILITY RELIEF

As the current owner or operator, the Voluntary Party may occupy the status of a "liable party" pursuant to the definition of that term contained in Tennessee Code Annotated section 68-212-202(4). The Commissioner is authorized by Tennessee Code Annotated section 68-212-224 to determine an apportionment of pursuant to factors in Tennessee Code Annotated section 68-212-207 as well as other equitable factors in an Agreement. Further, Tennessee Code Annotated section 68-212-224(a)(5) provides that the Commissioner is authorized to limit the liability of a participant in a voluntary agreement or consent order entered into pursuant to Tennessee Code Annotated section 68-212-224. Such voluntary agreement or consent order may limit the liability of such participant to the obligations set forth therein and exempt the participant from any further liability under any statute administered by the Department for investigation, remediation, monitoring, and/or maintenance of contamination identified and addressed in the voluntary agreement or consent order. The Commissioner may extend this liability protection to successors in interest or in title to the participant, contractors conducting response actions at the Site, developers, future owners, tenants, and lenders, fiduciaries, or insurers (collectively "Successor Parties"). The Commissioner agrees that the Voluntary Party's implementation of the actions agreed upon in Section G will constitute satisfaction of the apportioned liability of the Voluntary Party under all environmental statutes administered by the Department for the *"Matters Addressed in this Agreement"*.

The Voluntary Party and any of the Successor Parties, however, remain potentially responsible for any release of hazardous substances or other pollutants that occurs at the Site after the effective date of this Agreement while it owns or operates the Site or for environmental conditions other than *Matters Addressed in this Agreement*.

In accordance with the above referenced authority, the Department agrees that other than with respect to the obligations set forth in this Agreement, including without limitation the implementation of the actions agreed upon in Section G to the extent applicable to each, the Voluntary Party and Successor Parties shall bear no liability to the State of Tennessee under any statute administered by the Department for investigation, remediation, monitoring, treatment, and/or maintenance of environmental conditions identified in and addressed in Section D of this Agreement; provided, however, that to the extent that the Voluntary Party or Successor Parties has

or maintains an interest in the Site, or possesses and/or controls all or a portion of the Site, its liability protections herein are contingent upon its continued adherence and enforcement of any land use restrictions imposed pursuant to or as a result of this Agreement. Nothing in this Agreement shall be construed as limiting the liability or potential liability of the Voluntary Party for environmental conditions occurring after the effective date of this Agreement or for environmental conditions not identified and addressed in this Agreement. This liability protection and all other benefits conferred by this Agreement are extended to all future "Successor Parties" conditioned upon performance of the obligations contained in this Agreement and compliance with the Land Use Restrictions (hereinafter defined); provided, that such liability protection to other persons does not apply to the extent that such liability arose prior to the effective date of this Agreement. For the avoidance of doubt, a breach of this Agreement by a successor-in-interest or a successor-in-title will not alter the liability protection provided to a predecessor-in-interest or in-title.

F. ADMINISTRATIVE SETTLEMENT; THIRD PARTY LIABILITY

The Voluntary Party shall not be liable to third parties for contribution regarding *Matters Addressed in this Agreement*; provided that, the Voluntary Party gave the third party actual or constructive notice of this Agreement, and the third party was given an actual or constructive opportunity to comment upon this Agreement. The Voluntary Party has demonstrated to the Department that constructive notice was accomplished by publishing a summary of this Agreement in the Memphis Daily News at least thirty (30) days prior to the Effective Date of this Agreement.

Nothing in this Agreement shall impair the rights of third parties with respect to tort liability claims for damage to person or property arising from the contamination addressed by this Agreement.

G. AGREED ACTIONS TO BE TAKEN

The Voluntary Party agrees to conduct the following activities in order to address remedial action(s) recommended, including any monitoring and/or maintenance, pursuant to this Agreement. The Voluntary Party shall conduct all activities required by this Agreement in accordance with all applicable work plans, as approved by TDEC, all applicable laws and regulations, and any appropriate guidance documents. The Department has determined that the actions in this Agreement constitute “reasonable steps” with respect to *Matters Addressed in This Agreement*.

The Voluntary Party agrees as specified below to conduct the following activities:

1. Voluntary Party shall record a Notice of Land Use Restrictions (“NLUR”) attached hereto as Exhibit C within thirty (30) days of the effective date of this Agreement. Upon recording, a copy of the NLUR shall be mailed to all local governments having jurisdiction over any part of the subject property. Additionally, a copy of the recorded NLUR shall be provided to the Department. Any party receiving liability protection under this Agreement that seeks approval for restricted uses or seeks to cancel or make a restriction less stringent shall be responsible for any costs incurred by the Department in the review and oversight of work associated with the restriction modification.
2. Voluntary Party agrees to send notification of this Agreement by certified mail to all local governments having jurisdiction over any part of the subject property and to all owners of adjoining properties. Voluntary Party shall provide adequate documentation to the Department to demonstrate that public notice has been accomplished.

Upon completion of all tasks set forth in this Agreement, the Department shall issue to Voluntary Party a letter stating the requirements of this Agreement have been fulfilled and no further action is required of the Voluntary Party concerning contamination identified and addressed in this Agreement. Upon the request of a Voluntary Party from time to time, the Department shall issue an interim status letter identifying what specific obligations remain to achieve completion of the work under this Agreement. Issuance of a no further action letter shall not relieve the Voluntary Party receiving such letter of any responsibilities for operation and maintenance activities or continued adherence to and enforcement of land use restrictions, if any, pursuant to Tennessee

Code Annotated section 68-212-225. The Department reserves the right to require a Voluntary Party to take additional action for contamination caused by such Voluntary Party occurring after the date of this Agreement or for environmental conditions other than *Matters Addressed in this Agreement*.

H. ADDITIONAL REQUIREMENTS

1. The Voluntary Party may request a time extension for any deadline included in this Agreement prior to the deadline. The time extension may be granted through mutual consent for good cause shown.
3. The Voluntary Party and Successor Parties agree not to disturb, move, or remove any areas of hazardous substances, solid waste, or other pollutant(s) that are subject to liability protection under this Agreement without written approval by the Department unless the activities are being conducted under the terms and conditions of this Agreement or necessitated by the normal day-to-day activities of any on-going business.
4. Pursuant to Tennessee Code Annotated section 68-212-222, whether or not permits are required for onsite cleanup activities related to *Matters Addressed in this Agreement*, such activities shall meet the standards that would apply if such permits were required.
5. The Department acknowledges that the Voluntary Party itself may conduct redevelopment activities at the Site in addition to preparing the Site for potential development for Successor Parties. The Department further acknowledges that Voluntary Party and more than one Successor Party may develop different portions of the Site. Accordingly, Voluntary Party and one or more Successor Parties may assume the obligations and liability protections provided under this Agreement upon such Successor Parties' acquisition of property interests in the Site. The Voluntary Party or any Successor Party that transfers its interest at the Site shall be relieved of any further obligations under this Agreement.

I. SITE ACCESS

During the effective period of this Agreement, and until the Department's issuance of a No Further Action Letter upon the Voluntary Party's completion of all activities under this Agreement, the Voluntary Party, and any Successor Party shall, to the extent it is in control of the Site, provide the Department and its representatives or designees access during normal business hours to the Site to the extent that the Voluntary Party has the power and authority to grant such access. Nothing herein shall limit or otherwise affect the Department's right of entry, pursuant to any applicable statute, regulation, or permit. The Department and its representative shall comply with all reasonable health and safety plans published by the Voluntary Party, Successor Party, or their contractors and used by Site personnel for the purpose of protecting life and property.

J. SUBMISSION OF INFORMATION, REPORTS, OR STUDIES

The Department may deny submission or approval of any reports or studies performed by or on behalf of the Voluntary Party and submitted under the terms of this Agreement that do not contain the following statement:

"I certify under penalty of law, including but not limited to penalties for perjury, that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information contained in this document and on any attachment is true, accurate and complete to the best of my knowledge, information, and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for intentional violation. As specified in Tennessee Code Annotated section 39-16-702(a)(4), this declaration is made under penalty of perjury."

K. RESERVATION OF RIGHTS

1. This Agreement shall not be construed as waiving any right or authority available to the Commissioner to assess responsible parties other than the Voluntary Party or Successor Parties for liability for civil penalties or damages incurred by the State, including any natural resource damage claims which the Department or the State of Tennessee may have under Section 107 of CERCLA or any other statute, rule, regulation, or common law.

2. Nothing in this Agreement shall be construed as limiting or waiving any right or authority available to the Commissioner to require a liable party to address contamination occurring after the effective date of this Agreement or for environmental conditions other than *Matters Addressed in this Agreement*.

3. Nothing in this Agreement shall be interpreted as limiting the Voluntary Party's right to preserve the confidentiality of attorney work product or client-attorney communication. Tennessee Code Annotated section 68-212-202 et seq. contains no provisions for confidentiality or proprietary information. Therefore, records, reports, test results, or other information submitted to the Department under this Agreement shall be subject to public review. Any and all records, reports, test results or other information relating to a hazardous substance site or the possible hazardous substance at the Site submitted under this Agreement may be used by the Department for all purposes set forth in Tennessee Code Annotated section 68-212-201 et seq.

4. Any Voluntary Party or any of their Successor Parties may terminate this Agreement as it pertains to such terminating party at any time upon written notice to the Department during the time period that such party owns the Site and/or conducts operations at the Site. Upon such termination, the terminating party shall have no further obligations hereunder other than payment of outstanding oversight costs, if any, accrued to the date of notice of termination and adherence to any notice of land use controls filed under Tennessee Code Annotated section 68-212-225; provided, that all parties to this Agreement shall have and retain all authority, rights, and defenses as if this Agreement had never existed.

5. The Department may terminate this Agreement by written notice to the Voluntary Party in the event that the Department receives timely comments from third-party contribution claim holders pursuant to the notice sent under Section F of this Agreement, if any, and such

comments disclose facts or considerations that indicate that the allocation of liability of the Voluntary Party under this Agreement is inappropriate, improper, or inadequate; provided, however, absent fraud or intentional misconduct, that in such event the Voluntary Party may elect to waive the protections set forth in Section F hereunder and in such event this Agreement shall not be terminated, but rather the remainder of the terms and conditions of this Agreement shall continue to be in full force and effect and without termination. The Department's notice of termination must be made within thirty (30) days of the end of the 30-day notice period required by Section F. The Voluntary Party's waiver notice must be made within fifteen (15) days after receipt of the Department's termination notice.

6. In the event a Voluntary Party or Successor Party does not fulfill all the requirements established in this Agreement, the Commissioner may seek to enforce the Agreement through any legal remedy.

7. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions of this Agreement will remain in full force and effect.

8. Nothing in this Agreement shall be interpreted as limiting the liability for the improper management and/or disposal of contaminated material removed from the Site.

The individuals signing below on behalf of each Voluntary Party represents that they are duly authorized agents, capable of entering into a binding Agreement on behalf of the Voluntary Party. By entering into this Agreement, the Managing Partner certifies that the Voluntary Party did not generate or did not cause to generate, transport, or release contamination that is to be addressed at this Site.

The Effective Date of this Agreement is the last date of execution shown below.

VOLUNTARY PARTY

MONTGOMERY PARTNERSHIP

By: Eugenia M Williamson
(Authorized Signatory)

Eugenia M Williamson, Managing Partner
(Print Signatory's Name & Title)

Date: 2/11/2021

8466 Lockwood Ridge Rd
(Address)

#329

Sarasota FL 34243
(City, State, Zip Code)

STATE OF TENNESSEE DEPARTMENT
OF ENVIRONMENT AND
CONSERVATION

By: J S Sanders

James S. Sanders
Director, Division of Remediation

JAMES S SANDERS

(Print Director's Name)

Date: FEBRUARY 22, 2021

Approved as to form and legality:
TDEC Office of General Counsel Attorney

Elery R. Richardson
(Print Attorney's Name)

EXHIBIT A

TO BROWNFIELD AGREEMENT

SITE DESCRIPTION

Land situated in Shelby County, Tennessee:

Being all of Lot 5 and part of Lot 4 Bickford's Union Terrace Subdivision of record in the Shelby County Register's Office at Plat Book 7, Page 91, less and except such portions taken for road improvements, and more particularly described as follows:

Beginning at a point from South Avalon Street in the southeast corner of said Lot 5, the same being the northeast corner of lot 21, Bickford's Union Terrace Subdivision; thence North 88°23'00" West 135.89 feet to a point in the south line of Lot 4 Bickford's Union Terrace Subdivision; thence North 05°37'50" East a distance of 178.11 feet to a point, the same being in the south line of Union Avenue (40 feet from the centerline); thence South 89°00'00" East along the south line of Union Avenue, a distance of 110.32 feet to a point; thence along an arc to the right with a radius of 22 feet, a distance of 34.79 feet (chord South 40°41'30" East, 31.28 feet) to a point in the west line of South Avalon Street; thence South 04°37'00" West, a distance of 150.16 feet to the point of beginning, the same containing 0.54 acres, more or less.

EXHIBIT B

TO BROWNFIELD AGREEMENT

SUMMARY OF TECHNICAL REPORTS FOR THE SITE

The following summary is a listing of technical reports for environmental investigations and assessments for the Site that are in the possession of the Voluntary Party. This summary is intended to fulfill the statutory disclosure requirements associated with the Brownfield agreement application process. All reports listed below are on file at TDEC.

- 1) BL Companies. August 29, 2018. Phase I Environmental Site Assessment Wendy's #246 - 1593 Union Avenue Memphis, Tennessee. BL Project No.1800105.

This assessment has revealed the following recognized environmental conditions (RECs) in connection with the Site:

The Site appears to have been utilized for a filling/service station (from at least 1932 through at least 1952), an automotive repair facility, a potential dry cleaning facility in the late 1950s/early 1960s, and an automotive dealership prior to being redeveloped as a Wendy's restaurant in the mid-1970s. Sanborn Fire Insurance maps from the early 1950s depicted four gasoline underground storage tanks (USTs) on the northeastern portion of the Site; however, no documentation concerning the installation/removal of USTs was available for review as part of this assessment, and it appears that the filling/service station ceased operations prior to the implementation of State/Federal storage tank regulations. As such, the potential for subsurface impacts and/or vapor concerns from the historical storage/use of petroleum products and/or hazardous substances at the Site cannot be ruled out at this time.

- 2) BL Companies. October 29, 2018. Phase II Limited Site Investigation Wendy's #246-1593 Union Avenue Memphis, Tennessee. BL Project No. 1800105.

On September 25, 2018, BL Companies oversaw a surface geophysical survey of the northeastern corner of the Site performed by ALSIP Locating Service (ALSIP). The geophysical survey was performed in an attempt to identify anomalies consistent with abandoned USTs and/or former UST excavations (i.e., "tank graves") and to assist in the placement of the proposed soil borings by locating and tracing buried utilities and other underground piping/conduits or structures in combination with the utility One-Call markout. Through use of ground penetrating radar (GPR), ALSIP was able to identify a large area of disturbance, interpreted to be the former tank graves. This area measured approximately 40 feet wide, 43 feet long, and at least 8 feet deep within the northeastern corner of the Site parking lot. ALSIP did not detect any anomalies consistent with abandoned USTs at the Site.

On September 25 and 26, 2018, BL Companies oversaw the advancement of a total of 12 soil borings (SB01 through SB12) at the Site via direct-push boring technology employed by McCray Drilling, LLC. (McCray). Soil borings SB01 through SB03, SB07, and SB08 were advanced within the tank grave and the remainder of the borings were advanced along the eastern side of the Site to investigate the historical auto repair, dry cleaning, and auto dealership operations.

Although many VOCs, semi-volatile organic compounds (SVOCs), and lead were detected in many of the soil samples, only SB02 exhibited detections above the USEPA industrial soil RSL. Ethylbenzene (30.4 mg/kg) was found above both the Resident Soil and Industrial Soil RSL and naphthalene (14.8 mg/kg) was found above the Resident Soil RSL only in SB02. Further, total xylenes (89.2 mg/kg) in SB02 were found above both TDEC Commercial Worker and Resident Child inhalation based RBCLs. Total xylenes were also found above the TDEC Resident Child inhalation based RBCLs in SB07 (18.2 mg/kg), but below the Commercial Worker inhalation based RBCLs in the same sample. No other analytes were detected above either TDEC or USEPA criteria.

Historical filling/service station operations at the Site appear to have caused limited impacts to soil, evidenced by exceedances of State and/or Federal regulatory standards in two of the 10 soil samples (SB02 and SB07, both of which were collected from within the UST excavation). No other exceedances were detected in any of the soil samples. No surface soil samples were collected during this investigation.

Three of the four groundwater samples (two of which were collected from within the UST excavation) showed one or more exceedances of State and/or Federal regulatory standards, indicating impacts to the Site caused by these former operations.

All compounds detected above regulatory criteria appear to be the result of the former filling/service station operations and no compounds typically associated with dry cleaning activities were detected above standards. At the request of TDEC, a vapor intrusion study was conducted at the site in February 2020 to determine if soil and groundwater contamination at the site posed a threat to indoor air in the building.

- 3) Moring Environmental. March 30, 2020. Sub Slab & Soil Gas Air Quality Sampling Report Wendy's #246 1593 Union Avenue, Memphis TN.

On February 24, 2020, the sub slab (inside Wendy's) and soil gas sampling event (parking lot) was carried out by Moring Environmental and McCray Drilling personnel. Three (3) sub slab sampling locations labeled kitchen, dining room 1 and dining room 2 were advanced inside the Wendy's slab footprint. A hammer drill was used to drill a one (1) inch hole in each location six (6) inches below the slab for the sub slab sample collections. Direct Push (Geoprobe) technology using a retractable probe point drive rod was used to advance the sample probe for the outside parking lot soil gas sample to a maximum depth of three (3) feet in the boring.

Sub-slab and exterior soil gas sampling in February 2020 revealed the presence of several VOCs and petroleum related compounds, with two constituents (benzene and

dichlorodifluoromethane) exceeding their respective commercial/industrial vapor intrusion screening levels (VISLs). Benzene was detected at a concentration of 130 ug/m³ in the sub-slab soil gas sample Dining Room 2 which exceeds the applicable VISL of 52.4 ug/m³. However, this result was less than a carcinogenic risk of 1 x 10⁻⁵. Dichlorodifluoromethane was detected in the sub-slab soil gas Kitchen sample at 8,000 ug/m³, which exceeds the applicable VISL of 2,920 ug/m³. However, this result was less than a target hazard quotient of 1. Several VOCs were also detected in an exterior soil gas sample collected in the parking lot east of the building, but none of these detections exceeded TDUST Exterior Soil Gas Lookup Values. The results for the parking lot sample, which is close to the former service station and drycleaner location indicated a target carcinogenic risk of less than 1 x 10⁻⁵ and a target hazard quotient of less than 0.2 in comparison to commercial/industrial VISLs for detected constituents. However, the detection limits for 1,2-dibromoethane for the parking lot sample, as well as the sub-slab soil gas samples, exceeded applicable industrial/commercial VISLs. Based upon a review of the soil and groundwater results, 1,2-dibromoethane was not detected. The detection limits for groundwater exceeded the applicable TDUST RBCL for ingestion of water for a commercial/industrial worker and resident child (0.05 ug/L). However, the detection limits for groundwater were less than the applicable TDUST inhalation based RBCLs for a commercial/industrial worker (499 ug/L) and a resident child (85.5 ug/L). Xylenes were included on the analyte list for the sub-slab and exterior soil gas samples. The xylene results did not exceed applicable commercial/industrial VISLs or TDUST Exterior Soil Gas Lookup Values.

EXHIBIT C

TO BROWNFIELD AGREEMENT
NOTICE OF LAND USE RESTRICTIONS

This instrument prepared by:
Harley Steffens, Esq.
Evans Petree PC
1000 Ridgeway Loop Rd, Ste. 200
Memphis, TN 38120

NOTICE OF LAND USE RESTRICTIONS

Notice is hereby given that pursuant to Tennessee Code Annotated section 68-212-225 of the *Hazardous Waste Management Act of 1983*, the Commissioner of the Tennessee Department of Environment and Conservation (“TDEC”) has determined that land use restrictions are an appropriate remedial action at the below-described property. Pursuant to Tennessee Code Annotated section 68-212-225(d) the Register of Deeds shall record this Notice and index it in the grantor index under the name of the below-referenced Grantor.

Witnesseth:

WHEREAS, the Grantor, Montgomery Partnership, a Tennessee general partnership, is the real property owner of 1593 Union Ave., located in Memphis, Shelby County, State of Tennessee, the same being a portion of Y7 4170 being the base deed and more particularly described as Parcel II in that Assignment of Leases and Rents in Instrument No. 11104812 in the Register of Deed’s Office of Shelby County, identified as Parcel No.016036 00019, herein after referred to as the “Property,” and which is more particularly described in Exhibit A hereto, and,

WHEREAS, the Property is shown on a survey as shown by the Shelby County, Tennessee Assessor’s Office incorporated herein in Exhibit B and

WHEREAS, Grantor, also sometimes referred to herein as the “Voluntary Party” entered into a Brownfield Voluntary Agreement with TDEC pursuant to Tennessee Code Annotated section 68-212-224 for the purpose of addressing the real or perceived threat of the presence of hazardous substances, solid waste, or other pollutants at the Property; and

WHEREAS, in accordance with the terms of the Brownfield Voluntary Agreement for the Property, TDEC has determined that this Notice of Land Use Restrictions is an appropriate remedial action for the protection of human health and the environment for the contamination identified herein, so long as these land use restrictions are instituted and observed for the Property; and

WHEREAS, the Grantor has agreed to impose certain land use restrictions on the Property as set forth hereinafter and has agreed to preserve and maintain these restrictions.

Notice of Land Use Restrictions for:
Site # 79943
1593 Union Ave. Memphis Tennessee

NOW, THEREFORE, in consideration of the foregoing, the Grantor hereby declares that the Property should be held, sold, and conveyed subject to the following land use restrictions.

This Notice of Land Use Restrictions shall run with and bind the Property and shall be binding upon all owners and possessors of the Property, including but not limited to their tenants, authorized agents, employees, or persons acting under their direction or control, unless/until this Declaration shall be made less stringent or canceled as set forth under the paragraph entitled "Amendment and Termination."

Location of Contamination

The Property is located in Memphis, Shelby County, Tennessee at 1593 Union Avenue. A drawing of the entire Site is attached at Exhibit B. A summary of the environmental conditions at or near the Site is attached as Exhibit C, which includes figures illustrating sample locations. Phase I, Phase II, and Vapor Intrusion studies have been completed at the site. Soil, groundwater, and soil gas samples have been collected at the site. In 2018, soil and groundwater samples were collected and analyzed for volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs), and lead.

Sample results show several petroleum related compounds present in subsurface soil and groundwater beneath the site. The concentration of total xylenes in subsurface soil sample SB02 (89.2 mg/kg), collected at a depth of 8 to 9 feet below ground surface, exceeded the Tennessee Division of Underground Storage Tanks (TDUST) Inhalation Based Risk Based Cleanup Levels (RBCLs) for a commercial worker (88.0 mg/kg) and a resident child (9.6 mg/kg). The total xylenes concentration in subsurface soil sample SB07 (18.2 mg/kg), collected at a depth of 24 to 25 feet BGS, exceeded the TDUST inhalation based RBCL for a resident child. Additionally, naphthalene (32.2 ug/L in sample GW-1, 113 ug/L in sample GW-2, and 96.5 ug/L in sample GW-4) exceeded the TDUST RBCL for groundwater ingestion for both a resident child and industrial/commercial worker (20 ug/L). Benzene (51.5 ug/L in sample GW-1) exceeded the TDUST RBCL for groundwater ingestion for both a resident child and industrial/commercial worker (5 ug/L).

Sub-slab and exterior soil gas sampling in February 2020 revealed the presence of several VOCs and petroleum related compounds, with two constituents (benzene and dichlorodifluoromethane) exceeding their respective commercial/industrial vapor intrusion screening levels (VISLs). Benzene was detected at a concentration of 130 ug/m³ in the sub-slab soil gas sample Dining Room 2 which exceeds the applicable VISL of 52.4 ug/m³. However, this result was less than a carcinogenic risk of 1×10^{-5} . Dichlorodifluoromethane was detected in the sub-slab soil gas Kitchen sample at 8,000 ug/m³, which exceeds the applicable VISL of 2,920 ug/m³. However, this result was less than a target hazard quotient of 1. Several VOCs were also detected in an exterior soil gas

sample collected in the parking lot east of the building, but none of these detections exceeded TDUST Exterior Soil Gas Lookup Values. The results for the parking lot sample, which is close to the former service station and drycleaner location indicated a target carcinogenic risk of less than 1×10^{-5} and a target hazard quotient of less than 0.2 for detected constituents. Based upon the sub-slab soil gas data for the building existing at the time of the recording of this Notice of Land Use Restrictions in comparison to applicable industrial/commercial VISLs, vapor mitigation is not required for the existing building. However, as indicated in land use restriction #3 below, additional vapor intrusion assessment activities are required prior to the construction of any new buildings.

A summary of the environmental conditions at or near the site with a figure illustrating sample locations is attached as Exhibit C. The sub slab vapor results and sample locations as identified in Exhibit C are specific to the building existing as of the date of execution of this Notice. No surface soil samples were collected during the 2018 Phase II investigations. Site soil is currently covered by asphalt and/or the building slab, thereby preventing exposure to surface soil. The asphalt and building slab will remain in place and be maintained, as indicated in the land use restrictions below.

Land Use Restrictions

The Grantor agrees that the use of Property will be restricted as follows:

1. The Property will be restricted to industrial/commercial use only. The use of the property as a daycare, school, or church is prohibited.
2. Groundwater beneath the Property will not be used, accessed, or otherwise disturbed unless required by a Government agency of competent jurisdiction. This Land Use Restriction prohibits, without limitation, the installation of groundwater wells for intended use as a potable water source.
3. Prior to beginning construction for any new building(s), the Grantor shall evaluate whether environmental conditions pose a threat of vapor intrusion into the new building(s) and shall share its findings with TDEC. If determined by TDEC to be warranted based upon such data evaluation, any impacted building(s) shall be equipped with one or more effective vapor mitigation features (e.g., membrane or other barrier, passive or active mitigation system) as proposed by Property owner and approved by TDEC. The owner of the Property shall not permit anyone to disturb, modify, damage, or remove any such installed vapor mitigation barrier or system at the Property, unless first approved in writing by TDEC and pursuant to a TDEC-approved work plan.
4. Prior to the removal of any structures existing at the time of this Notice, the excavation of soil underlying any impervious surfaces (ex. pavement, concrete, etc.) or buildings, or the grading or excavation of any soil at the

Property, the Grantor, its successors, or assigns shall provide a Soil Management Plan, which includes a health and safety plan, that demonstrates to the satisfaction of TDEC that any such proposed soil removal, excavation, or regrading will not pose a danger to public health, safety, or the environment. Any such Soil Management Plan shall be submitted to TDEC for review and approval. This restriction does not include standard maintenance activities (including parking lot or drain maintenance) or lawn maintenance or landscaping at the Property.

5. All impacted soils remaining on the Property shall be covered by an impervious surface (concrete, asphalt, or pavement) or by a minimum of 24 inches of clean soil, and these protections shall be maintained until such time as the Department determines they are no longer needed. In areas where landscaping and grass already exist, clean bedding and vegetative cover should be maintained. However, this restriction does not preclude the replacement of vegetation with minimal invasive activity.

Enforcement

Any owner of the land or any unit of local government having jurisdiction over any part of the Property may enforce this Notice of Land Use Restrictions by means of a civil action. The Commissioner of TDEC may enforce this Notice of Land Use Restrictions through the issuance of an Administrative Order or by means of a civil action, including one to obtain an injunction against present or threatened violations of the restriction. Pursuant to Tennessee Code Annotated section 68-212-213, any person who fails, neglects, or refuses to comply with a land use restriction commits a Class B misdemeanor and is subject to the assessment of a civil penalty of up to ten thousand dollars (\$10,000) per day.

Term

This Notice of Land Use Restrictions shall run with and bind the Property and shall be binding upon all parties having any right, title, or interest in the Property or any part thereof (i.e. holders and their grantees, lessees, authorized agents, employees, or persons acting under their direction or control), their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof and to TDEC and the respective successors and assigns of such parties unless/until these Land Use Restrictions are made less stringent or canceled as set forth under the paragraph entitled "Amendment and Termination."

Amendment and Termination

After public notice and an opportunity for public input, as provided in Tennessee Code Annotated section 68-212-225(e), this Notice of Land Use Restrictions may be made less

Notice of Land Use Restrictions for:
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stringent or canceled by the Commissioner of TDEC if the risk has been eliminated or reduced so that less restrictive land use controls are protective of human health and the environment. The Grantor, its successors, and/or assigns seeking approval to cancel or make a Land Use Restriction less stringent shall be responsible for any costs incurred by the Department in the review and oversight of work associated with the restriction modification.

An amendment or termination of this land use restriction is subject to TDEC approval and must be approved in writing before any amendment or termination is made. No amendment to or termination of this Notice of Land Use Restrictions shall be effective until such amendment or instrument terminating this Notice of Land Use Restrictions is recorded in the Shelby County Register of Deeds.

Any person or entity that seeks approval and/or consent from the Department pursuant to work plans or reports required under the restrictions in the Notice of Land Use Restrictions shall be responsible for any costs incurred by the Department in the review and oversight of work associated with such approval and/or consent.

Contact the Tennessee Department of Environment and Conservation, Division of Remediation, for further information concerning the Property and refer to site number 79-943.

Severability

Invalidation of any of these covenants or restrictions by judgement or court order shall in no way affect any other provisions, which shall remain in full force and effect.

[TDEC approval and Grantor signature pages follow]

Notice of Land Use Restrictions for:
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Approved by:

Tennessee Department of Environment and Conservation, Division of
Remediation

Name: James S. Sanders
Title: Director

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, the undersigned, Notary Public having authority within the aforesaid State, **James S. Sanders**, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the Director of the Division of Remediation and is authorized to execute this instrument on behalf of the Department.

WITNESS my hand, at office, this 10th day of February, 2020

Notary Public

My Comm Exp: 10/7/2023



Notice of Land Use Restrictions for:
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1593 Union Ave. Memphis Tennessee

IN WITNESS WHEREOF, the undersigned has executed this instrument this
11 day of JAN 2020.

Grantor

MONTGOMERY PARTNERSHIP, a
Tennessee general partnership

By: Eugenia M. Williamson and Walter
Williamson, as Tenants by the
Entirety

Its: Managing Partner

By: Eugenia M. Williamson
Eugenia M. Williamson

Its: Authorized Signatory

STATE OF Florida
COUNTY OF Wake

Personally appeared before me, the undersigned Notary Public having authority within the aforesaid State, **Eugenia M. Williamson**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be the authorized signatory of the Managing Partner of Montgomery Partnership, the within named Grantor, and that such person executed this instrument for the purposes herein contained, by signing the name of the Grantor by such person as the authorized signatory of the Managing Partner of Grantor.

WITNESS, this 11 day of JAN, 2020.

[Signature]

Notary Public

My Comm Exp:

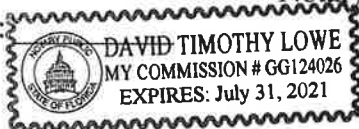


EXHIBIT "A"

Land situated in Shelby County, Tennessee:

Being all of Lot 5 and part of Lot 4 Bickford's Union Terrace Subdivision of record in the Shelby County Register's Office at Plat Book 7, Page 91, less and except such portions taken for road improvements, and more particularly described as follows:

Beginning at a point from South Avalon Street in the southeast corner of said Lot 5, the same being the northeast corner of lot 21, Bickford's Union Terrace Subdivision; thence North 88°23'00" West 135.89 feet to a point in the south line of Lot 4 Bickford's Union Terrace Subdivision; thence North 05°37'50" East a distance of 178.11 feet to a point, the same being in the south line of Union Avenue (40 feet from the centerline); thence South 89°00'00" East along the south line of Union Avenue, a distance of 110.32 feet to a point; thence along an arc to the right with a radius of 22 feet, a distance of 34.79 feet (chord South 40°41'30" East, 31.28 feet) to a point in the west line of South Avalon Street; thence South 04°37'00" West, a distance of 150.16 feet to the point of beginning, the same containing 0.54 acres, more or less.

Real property being a portion of Y7 4170 being the base deed and more particularly described as Parcel II in that Assignment of Leases and Rents in Instrument No. 11104812 in the Shelby County Register of Deeds.

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EXHIBIT "B"

Melvin Burgess



Assessor of Property

MEMPHIS - COMMERCIAL - FEDERAL PROPERTY - APPLS TAX COLLECTOR - CAREER OPPORTUNITY - CONTACT - ABOUT - HOME

SEARCH	Property Details	MAPS
Property Address	1593 UNION AVE	
Parcel ID	916235 00016	
Owner Name	MONTGOMERY LTD	
2022 Appraised Value	\$700,000	
Property Management Details	View more	
Deed Information	View more	
County Tax	View more	
City Tax	View more	



EXHIBIT "C"

The site appears to have been utilized for a filling/service station (from at least 1932 through at least 1952), an automotive repair facility, a potential dry cleaning facility in the late 1950s/early 1960s, and an automotive dealership prior to being redeveloped as a Wendy's restaurant in the mid-1970s. Sanborn Fire Insurance maps from the early 1950s depicted four gasoline underground storage tanks (USTs) on the northeast corner of the property, however, no documentation of installation or removal of the USTs was found. The potential for subsurface impacts and/or vapor intrusion from past activities led to a geophysical survey and collection of subsurface samples in 2018.

Through the use of ground penetrating radar (GPR), it was determined that the petroleum USTs formerly located on the northeast portion of the property had been removed at some time in the past.

A total of 12 soil borings were completed during this investigation, with subsurface soil and groundwater samples (when encountered) collected from each boring. Sample results show several petroleum related compounds present in subsurface soil and groundwater beneath the site. The concentration of total xylenes in subsurface soil sample SB02 (89.2 mg/kg), collected at a depth of 8 to 9 feet below ground surface, exceeded the Tennessee Division of Underground Storage Tanks (TDUST) Inhalation Based Risk Based Cleanup Levels (RBCLs) for a commercial worker (88.0 mg/kg) and a resident child (9.6 mg/kg). The total xylenes concentration in subsurface soil sample SB07 (18.2 mg/kg), collected at a depth of 24 to 25 feet BGS, exceeded the TDUST inhalation based RBCL for a resident child. Additionally, naphthalene (32.2 ug/L in sample GW-1, 113 ug/L in sample GW-2, and 96.5 ug/L in sample GW-4) exceeded the TDUST RBCL for groundwater ingestion for both a resident child and industrial/commercial worker (20 ug/L). Benzene (51.5 ug/L in sample GW-1) exceeded the TDUST RBCL for groundwater ingestion for both a resident child and industrial/commercial worker (5 ug/L). Additionally, the detection limit for sample GW-2 (<33.1 ug/L) exceeded the TDUST RBCL for groundwater ingestion of both a resident child and industrial/commercial worker.

Sub-slab and exterior soil gas sampling in February 2020 revealed the presence of several VOCs and petroleum related compounds, with two constituents (benzene and dichlorodifluoromethane) exceeding their respective commercial/industrial vapor intrusion screening levels (VISLs). Benzene was detected at a concentration of 130 ug/m³ in the sub-slab soil gas sample Dining Room 2 which exceeds the applicable VISL of 52.4 ug/m³. However, this result was less than a carcinogenic risk of 1 x 10⁻⁵. Dichlorodifluoromethane was detected in the sub-slab soil gas Kitchen sample at 8,000 ug/m³, which exceeds

the applicable VISL of 2,920 ug/m³. However, this result was less than a target hazard quotient of 1. Several VOCs were also detected in an exterior soil gas sample collected in the parking lot east of the building, but none of these detections exceeded Tennessee Division of Underground Storage Tanks (TDUST) Risk Based Cleanup Levels (RBCLs). The results for the parking lot sample, which is close to the former service station and drycleaner location indicated a target carcinogenic risk of less than 1×10^{-5} and a target hazard quotient of less than 0.2 for detected constituents. However, the detection limits for 1,2-dibromoethane for the parking lot sample, as well as the sub-slab soil gas samples, exceeded applicable industrial/commercial VISLs. Based upon a review of the soil and groundwater results, 1,2-dibromoethane was not detected. The detection limits for groundwater exceeded the applicable TDUST RBCL for ingestion of water for a commercial/industrial worker and resident child (0.05 ug/L). However, the detection limits for groundwater were less than the applicable TDUST inhalation based RBCLs for a commercial/industrial worker (499 ug/L) and a resident child (85.5 ug/L). Xylenes were included on the analyte list for the sub-slab and exterior soil gas samples. The xylene results did not exceed applicable commercial/industrial VISLs or TDUST Exterior Soil Gas Lookup Values.

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